

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

DAVID ALCORN and
AGHEE WILLIAM SMITH II,

Defendants.

CRIMINAL ACTION NO.
2:19cr47

EXCERPT TRANSCRIPT OF PROCEEDINGS
(Jury Trial - Day 4 - Testimony of P. Melley)

Norfolk, Virginia

February 4, 2022

BEFORE: THE HONORABLE RAYMOND A. JACKSON
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

By: Andrew C. Bosse
Melissa E. O'Boyle
Elizabeth M. Yusi
Assistant United States Attorneys
Counsel for the United States

RICHARD S. YAROW LLC

By: Richard S. Yarow
Counsel for Defendant David Alcorn

FEDERAL PUBLIC DEFENDER'S OFFICE

By: Andrew W. Grindrod
Lindsay Jo McCaslin
Assistant Federal Public Defenders
Counsel for Defendant Aghee William Smith II

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WITNESSPAGE

PETER MELLE

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P. Melley - Direct

* * * * *

PETER MELLEY, called by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOSSE:

Q. Good morning, sir. Would you please state your name for the record and spell it for us.

A. Peter Melley, M-e-l-l-e-y.

Q. Where do you work, sir?

A. I'm the director of FINRA's Criminal Prosecution Assistance Group in Washington, D.C.

Q. And tell the jury, what is FINRA?

A. FINRA is a self-regulatory organization of the securities industry. Its goal is to protect investors and ensure the integrity of various trading markets. It does this three main ways:

One is to conduct surveillance of various trading markets, like the NASDAQ stock market; another is to create rules to govern the conduct of its members, who are brokerage firms and those individuals who work at those firms, to buy and sell securities; and, finally, in order to ensure that customers and investors are confident in those that are handling their funds are qualified and experienced by FINRA-administered licensing exams and also enforces continuing education requirements.

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1 Q. Can you tell the jury, what does FINRA stand for, the
2 acronym?

3 A. The Financial Industry Regulatory Authority.

4 Q. In the past, was your group FINRA known by a different
5 name?

6 A. Yes. Until 2007, it was known as NASD, National
7 Association of Securities Dealers, then in 2007, it merged
8 with the regulatory function of the New York Stock Exchange
9 to create a new regulatory entity called FINRA.

10 Q. How long have you worked for this organization?

11 A. Approximately 26 years, with the last nine years as
12 director of the Criminal Prosecution Assistance Group.

13 Q. As director of that group, what are your
14 responsibilities?

15 A. To oversee a unit of four attorneys, to provide
16 assistance in criminal investigations and prosecutions
17 involving securities fraud. That may range from analyzing
18 trading data, other relevant documents, creating exhibits to
19 summarize my analysis and, if necessary, providing testimony
20 to our analysis.

21 Q. Through your work and your job background, are you
22 familiar with the investment industry generally and the
23 regulations that govern investment professionals?

24 A. Yes, I am.

25 Q. And are you familiar with the different licensing tests

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1 that FINRA administers?

2 A. I am.

3 Q. Let's start, if you could tell the jury generally, what
4 is a broker?

5 A. A broker is an individual -- the official term is a
6 "registered representative" -- whose job is to, on behalf of
7 clients, purchase and sell securities and handle client funds
8 to do so.

9 Q. Without getting too deep in the weeds, what do we mean by
10 a security?

11 A. A security is a tradeable financial asset. The most
12 common would be stock that signifies ownership in a
13 corporation, and then the unit of stock usually is shares
14 that you can then buy and sell in a marketplace. Other
15 securities would be bonds or options.

16 Q. Okay. I've been asked, can you put that up? It's going
17 to come through clearer, I think.

18 Can a brokerage firm buy and sell securities for its
19 clients without being registered with FINRA?

20 A. It cannot. All brokerage firms and the individuals that
21 work at those firms that handle customer accounts must be
22 licensed and registered with FINRA.

23 Q. You mentioned licenses. Are there different licenses for
24 different kinds of financial products that brokers sell?

25 A. Yes. Different licenses based on the products that one

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1 sells as well as the position within the brokerage firm that
2 that individual assumes.

3 Q. Are you familiar with what subjects are covered on the
4 FINRA examination to become a broker?

5 A. Yes, I am.

6 Q. And are you familiar with the duties and responsibilities
7 of a person who is a licensed broker?

8 A. Yes.

9 Q. Is it possible for FINRA to take away somebody's ability
10 to be in the securities industry?

11 A. Yes. As I mentioned earlier, one of FINRA's
12 responsibilities is to enforce its own rules of conduct.
13 Again, this is to protect investors. So if an individual is
14 found to be in violation of FINRA rules, that person can be
15 sanctioned regarding a fine, a suspension, or actually a bar
16 from the industry where they're, in essence, kicked out of
17 the securities industry.

18 Q. Let's talk first about the license to become a broker.

19 What is the examination you have to take to become a
20 broker, also known as a registered representative?

21 A. The common entrance exam is the Series 7, which is the
22 general registered representative exam. That is the one you
23 will take to basically ensure and be licensed that you can
24 then handle client accounts.

25 Q. How does FINRA keep track of who's taken the exam, when

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1 they've taken it, whether they've passed or failed?

2 A. FINRA maintains an online database, registration and
3 licensing information. It's called CRD, Central Registration
4 Depository.

5 All brokerage firms are responsible for any of their
6 employees who take an exam and pass, to provide that
7 information to FINRA so that it can put that information in
8 the database, and the database then tracks one's history
9 within the securities industry; so any of their employments,
10 any of their licenses, as they move from firm to firm, gain
11 new licenses -- that is all in the database, you know, and
12 shows up in a report, if necessary.

13 Q. Are you familiar with the subject matter of that
14 examination and the way that people prepare for it?

15 A. Yes.

16 Q. Can you describe the test itself?

17 A. Sure. The Series 7 commonly -- and I think today we're
18 talking about it during the 1990s. It was 250 questions,
19 about a six-hour exam covering a range of topics from types
20 of securities markets, types of investment products -- again,
21 as I mentioned, stocks, bonds, options -- and what kind of
22 governs overall is the relationship between the rep and the
23 client in terms of handling funds, truthful communications.

24 There's also a number of sections that cover the
25 emphasis on antifraud provisions, whether it's at the federal

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1 level for federal securities laws or FINRA's own rules of
2 conduct.

3 Q. Is the Series 7 considered within the industry to be a
4 difficult test?

5 A. It is. It's not uncommon for someone to have to take it
6 on more than one occasion in order to pass the exam.

7 Q. And we talked about preparation for the exam. Is this a
8 test that people spend significant time studying for?

9 A. Yes. Usually how the process works is, once someone is
10 hired by a firm, their first responsibilities are really just
11 to study for the test. So the firm will provide them with a
12 variety of study materials, either provided originally from
13 FINRA or from other vendors. There may be prep courses. But
14 because it is a rigorous exam, that is their primary focus
15 once they are hired by the firm.

16 Q. In preparation, Mr. Melley, for your testimony today, did
17 you review FINRA records related to the defendants in this
18 case, Bill Smith and David Alcorn, and also FINRA records
19 related to some other people, Daryl Bank and Kent Maerki?

20 A. Yes, I did.

21 Q. And if you could -- I'm going to pull up on the screen
22 for you, just for the witness, Government's Exhibit 3. And
23 I'm going to scroll down to Page 3 so you can identify it.

24 What is this document this I'm showing you here?

25 A. This is a CRD report based off of the CRD system that I

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1 generated for Mr. Smith. As you can see at the top, it
2 includes his name and also a unique identifying number. Each
3 individual who is in the CRD system has their own unique CRD
4 number.

5 MR. BOSSE: The government will offer Government's
6 Exhibit 3.

7 THE COURT: Any objection?

8 MR. GRINDROD: No, Your Honor.

9 THE COURT: It will be admitted.

10 (Government's Exhibit 3 was admitted.)

11 BY MR. BOSSE:

12 Q. And just so the jury also can see what you've just
13 described, this is essentially the FINRA record collection
14 for Mr. Smith, correct?

15 A. Correct.

16 Q. What is the first thing that is listed in chronological
17 order here?

18 A. Again, usually you start with the registration history,
19 meaning the employment history for the individual; if they
20 are currently working with a firm; if not, their historical
21 firm, history. So as you can see, as of his latest firm that
22 he worked with in the industry, Stonehurst Securities is
23 listed. Also it shows the dates that he worked at the firm.

24 Q. And when is the last time that Mr. Smith worked with a
25 broker?

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1 A. January of 2009.

2 Q. And so going back in time, what does this show here on
3 Page 4?

4 A. This shows the other firms. I believe, altogether,
5 Mr. Smith worked for seven different brokerage firms over a
6 16-year period, from 1993 to 2009.

7 Q. And going down to the next page, what are we seeing here
8 on 5? This is a continuation, isn't it, of what we just saw?

9 A. Correct. The employment history, that's from -- that's
10 information that's entered in by the individual while the
11 registration history we first looked at is info that comes
12 from the brokerage firm itself that they are working for.

13 Q. Let's go to Page 7, which I can do by scrolling here.
14 You mentioned that it covers the tests that people took and
15 passed and also any tests they took and didn't pass.

16 Can you walk the jury through, briefly, because
17 we're going to do it in more detail, and give a brief
18 overview of what tests Mr. Smith took and passed?

19 A. Mr. Smith passed three separate exams, the Series 7,
20 which again is the entrance broker exam, the registered rep
21 exam; the Series 22, which is a direct participation program
22 exam; and the Series 63, which is a state companion to the 7.

23 In order to buy and sell securities in individual
24 states, you must be registered in that state, so that's why
25 you have to take the Series 63.

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1 So he passed three exams. He did take, on two
2 occasions but failed, the Series 65. That is the state
3 investment advisor exam.

4 Q. And you see up here above the exam appointment section,
5 there's a section called "Other Business." What is this?

6 A. So all individuals, when they enter the securities
7 industry, they are required to disclose any other businesses
8 or employers that they are associated with.

9 And so for Mr. Smith, this is his disclosure that he
10 was also in the life insurance and annuities business and
11 also had some media ties to a radio show and so forth.

12 Q. Is that number 2, the *Safe Money Retirement* show?

13 A. Correct.

14 Q. This is provided by him, correct, this description?

15 A. Right. This is -- the individual is required to disclose
16 this, and what they put on the form is what is then listed on
17 the CRD system.

18 Q. In the last line of paragraph 2, how does he describe the
19 radio show that he hosted?

20 A. "To educate the public on the importance of secure
21 financial plans."

22 Q. All right. And as we go down the document, down to the
23 bottom of Page 8, after the main exam results, what are we
24 seeing here under the reference "CE"?

25 A. CE refers to continuing education. As I mentioned

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1 earlier, FINRA is also responsible for helping enforce the
2 requirement that one continually takes refresher courses
3 regarding, for lack of a better term, the dos and don'ts of
4 the industry.

5 Continuing education is required within two years of
6 entering the industry and every three years thereafter. It's
7 a computer module course covering ethical sales practice,
8 regulatory and compliance standards. It basically covers
9 current trends, issues, standards in the industry.

10 Again, it's just as a refresher for the individual,
11 because for many of them, they are in the industry for a
12 number of years. They may not have, you know -- they took
13 the test a long time ago, but these refresher courses just
14 remind them, again, about how you're supposed to conduct
15 yourself, especially with regards to clients, being truthful,
16 not engaging in fraudulent practices, things of that nature.

17 Q. Does this show that Mr. Smith did complete those
18 continuing education requirements every two years up until, I
19 guess, 2009 when his license lapsed?

20 A. Yes. Over 16 years, he completed it on five separate
21 occasions.

22 Q. So after -- and we're going to talk about getting the
23 Series 7 license, but you mentioned that it lapsed in 2009.

24 After 2009, was Mr. Smith allowed to sell
25 investments that could be characterized as securities to

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1 clients?

2 A. No. Once you are out of the industry, you are no longer
3 current in your registration -- again, you have to be
4 registered with FINRA in order to transact in securities. So
5 failing to do so, if you're not registered, you are not
6 allowed to do that anymore.

7 Q. Going back to the examination that you mentioned that he
8 didn't pass. Was he ever licensed to be an investment
9 advisor to clients?

10 A. He was not. He took the Series 65 exam on two occasions,
11 did not pass on either occasion.

12 MR. BOSSE: If we could show the witness 97D.

13 BY MR. BOSSE:

14 Q. What are we seeing here, sir?

15 A. This is a summary chart that I created based on
16 Mr. Smith's CRD report that we previously were reviewing.
17 This shows the three licenses he passed and provides
18 background on what's covered on the exam, when he passed the
19 exam, and the types of products involved.

20 MR. BOSSE: Your Honor, I would like to show the
21 summary chart to the jury. I'm not planning to offer this
22 one into evidence.

23 THE COURT: Any objection?

24 MR. GRINDROD: No, Your Honor.

25 MR. YAROW: No, Your Honor.

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1 THE COURT: It may be shown.

2 BY MR. BOSSE:

3 Q. And so are these the three examinations that we just went
4 through that he did pass; the 22, the 7, and the 63?

5 A. Yes.

6 Q. And let's talk first about the Series 7. And if you
7 could tell the jury again the license date that he received
8 that.

9 A. September 1993 he passed that exam.

10 Q. And let's talk now about the exam itself.

11 MR. BOSSE: Could we see, for the witness, 97A,
12 please.

13 BY MR. BOSSE:

14 Q. Are you familiar with what we're seeing here?

15 A. Yes. This is a study outline that was relevant at the
16 time Mr. Smith took the exam. So these would have been the
17 topics and materials covered on the exam when he took it back
18 in September '93.

19 Q. Is this a document that FINRA maintains, and NASD
20 maintained before, a bank of the old study outlines for the
21 examinations?

22 A. Exactly.

23 MR. BOSSE: I'll offer 97A.

24 THE COURT: Hearing no objection, 97A is admitted.

25 (Government's Exhibit 97A was admitted.)

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1 BY MR. BOSSE:

2 Q. What are the main categories of information tested by the
3 Series 7?

4 A. The various securities markets, where one could trade
5 various products, the types of products themselves, various
6 securities, and so forth.

7 Again, there's a large emphasis on the relationship
8 with the client under Series 7. For a broker-client
9 relationship, one must have a -- put their investors in
10 suitable investments. So it's the responsibilities governing
11 that conduct.

12 And then there's also another focus on, again, as
13 I've said, like, the dos and don'ts of the industry, federal
14 securities laws as well as FINRA rules regarding how one must
15 conduct themselves when engaging in the purchase or sale of
16 securities.

17 Q. So are the people who take the exam tested on the ethical
18 rules, for example, learning that you can't lie to clients
19 when selling investment products?

20 A. Yes. The focus is on truthful communications. For
21 FINRA's perspective, it's standards of commercial honor and
22 just and equitable principles of trade. So, again, the
23 bedrock pillars are that you must conduct yourself in a way
24 that you are providing accurate, thorough, essential
25 information and also not engaging in any conduct or

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1 techniques that may be considered fraudulent.

2 MR. BOSSE: Could we see Page 7 of the document,
3 please. So it's got to be two leading zeros.

4 BY MR. BOSSE:

5 Q. What are the critical functions? What does that mean?

6 A. Critical functions is just kind of one of the bedrock
7 pillars of the exam in terms of what is going to be covered.

8 This is Critical Function 1, which really is kind of
9 focusing on how the rep is supposed to kind of govern their
10 responsibilities and their relationship with the client; as I
11 said, talking about the standards of truthfulness, good
12 taste, providing accurate information, essential information,
13 because whatever information the investor is receiving, that
14 is going to influence them on how they make an informed
15 decision.

16 And that is true from both a FINRA perspective and
17 the federal securities laws, which the whole purpose is that
18 investors receive that truthful essential info so they can
19 make an informed decision whether to invest or not.

20 Q. Is what you've just described what is covered under
21 Module 1.2.1 that everyone taking this exam has to learn
22 about, the general standards of truthfulness and good taste?

23 A. Correct. So this is somewhat of an umbrella of how the
24 relationship should be conducted.

25 MR. BOSSE: Could we just page down to the next

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1 page, please.

2 BY MR. BOSSE:

3 Q. Looking at Critical Function 2, what is that?

4 A. This kind of focuses more on what one would say is the
5 get to know your customer, try to understand the client's
6 investment objectives. This would be based on getting
7 background information on the client; what's their age, their
8 risk tolerance, their sophistication when it comes to
9 financial products in the industry, you know, what assets do
10 they have under management, and if they have any liabilities.

11 So again, it is -- you want to get to know and
12 understand what your customer's needs are so that you can
13 then build on, as I think we'll talk about in the next
14 critical function -- put them into what is a suitable
15 investment.

16 MR. BOSSE: All right. Could we skip down, then, to
17 Page 28 of this document.

18 BY MR. BOSSE:

19 Q. And we have skipped a couple. We are now at Critical
20 Function 5. Is this what you were just discussing, the
21 suitability of an investment?

22 A. Right. So, again, with the Series 7, the emphasis on the
23 relationship is that the primary responsibility is to the
24 client from the perspective of the registered rep.

25 So by having that information that you've conducted

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1 that due diligence on the client's needs and background, you
2 know, what they're willing to tolerate in terms of risk
3 coupled with the due diligence you do on the investment
4 products itself, taken together, the rep and the client
5 should be on the same page in terms of what funds are now
6 going to be the subject of the investment and where it's
7 going to go.

8 So, for instance, this Critical Function 5 is trying
9 to, you know, focus on things like, well, based on your
10 tolerance and your age, what are you willing to risk by
11 putting funds in? Someone who is older is not going to be
12 looking for taking the chance on losing money for a period of
13 time, or you want to make sure they are going to be able to
14 get that principal back soon, so it's all based on the
15 relationship and the needs of the client.

16 Q. How does that -- let me ask you first:

17 You are familiar with the term "due diligence"?

18 A. Yes.

19 Q. Is that also covered on this examination?

20 A. Yes. As I said, the due diligence kind of is from two
21 different perspectives: One is identifying the client and
22 what their needs are based on their background and all the
23 relevant factors; and then there's the due diligence of the
24 investment itself and providing that essential information,
25 you know, company structure, size of the investment, where --

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1 the use of the proceeds, you know, what type of payment will
2 be made back in terms of the client, in terms of the return
3 of their investment. All that information is essential for
4 the investor to then make an informed decision.

5 Q. What is the effect of passing this examination, the
6 Series 7? What are you allowed to do?

7 A. Once you pass, you are then allowed to handle client
8 accounts and, more importantly, clients funds. From the
9 client's perspective, if they are viewing their rep who is
10 licensed, they are thinking they are competent, they are
11 qualified, they are experienced --

12 MR. GRINDROD: Objection, Your Honor.

13 THE COURT: Sustained on what they're thinking.

14 MR. BOSSE: Okay. That's fine.

15 BY MR. BOSSE:

16 Q. Did Mr. Smith pass the Series 7 exam on his first attempt
17 at taking it?

18 A. He did.

19 Q. Let me ask you, you talked a little bit about the
20 continuing education requirements for the Series 7. Did
21 those also include the updates on the ethical components that
22 are tested on the initial Series 7 examination?

23 A. Correct.

24 Q. And did Mr. Smith complete all of those every two years
25 as well?

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1 A. He did, five different occasions over 16 years.

2 MR. BOSSE: Could we have 97D back up again, please.

3 BY MR. BOSSE:

4 Q. Let's talk about the Series 63. If you could give a
5 general overview, and then we're going to briefly look at the
6 exam materials for that as well.

7 A. The Series 63 --

8 THE COURT: Wait a minute. We don't need a
9 narrative here, Mr. Bosse. You ask the questions, and let's
10 move on to it, because you're getting into mighty detailed
11 minutia about these detailed regulations. So guide him
12 through it. Cut right to the heart of it, and let's move on.

13 MR. BOSSE: Yes, sir.

14 BY MR. BOSSE:

15 Q. Can you describe the Series 63 at a very high level of
16 generality, and we'll get right into it.

17 A. It is simply the same as the Series 7 in terms of what's
18 covered. The difference is in order for one to transact in a
19 particular state, dealing with clients, you have to be
20 registered in that state. In order to be registered, you
21 need to take the Series 63 exam.

22 Q. Is that something that we saw on the CRD report for
23 Mr. Smith, that he was selling in Nevada, California, and
24 Utah?

25 A. Correct.

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1 MR. BOSSE: Let's go to 97C to show the witness.

2 BY MR. BOSSE:

3 Q. What is this document?

4 A. This is the study guide that was in play at the time when
5 Mr. Smith passed the Series 63 exam.

6 MR. BOSSE: I'll offer 97C, Your Honor.

7 THE COURT: Hearing no objection, 97C is admitted.

8 (Government's Exhibit 97C was admitted.)

9 MR. BOSSE: If we could go to Page 21, please.

10 BY MR. BOSSE:

11 Q. And if you could tell us about what's tested on
12 Section IV of the exam.

13 A. About half of the Series 63 exam covers the
14 responsibilities and how one must not engage in fraudulent
15 and prohibited practices, between a description of what those
16 practices are including misstatements, false statements,
17 omissions, as well as other deceptive techniques. It also
18 talks about the actual rules that govern that type of
19 activity at the federal level, at the state level, and also
20 the regulatory agencies involved in governing that conduct.

21 Q. Let's go down to subject 3, prohibited business
22 practices. And looking down at 3(a), what does someone who
23 is taking this exam have to learn about prohibited business
24 practices here?

25 A. That they are not allowed to engage in any misleading or

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1 untrue statements. Again, the focus is on providing truthful
2 communications about essential information so investors can
3 make an informed decision.

4 Q. And the kinds of topics that people aren't supposed to
5 make misleading and untrue statements about, are those listed
6 here as subparts?

7 A. Yes. I think these are the first couple regarding
8 background on the company, like issuer's earnings, trading
9 information, but it also just goes to the actual information
10 regarding the company that you want to convey to an investor
11 to make that informed decision.

12 Q. All right. And we can do this briefly. Does this
13 section also cover -- someone taking this exam will also have
14 to learn about the suitability of recommendations they make
15 to their clients and customers?

16 A. Yes. Again, the primary responsibility is to the client,
17 and suitability goes to making an appropriate or, you know,
18 a -- providing pertinent information to make an appropriate
19 recommendation for them to invest based on what you know of
20 the customer.

21 MR. BOSSE: Let's go back to 97D for the last time.

22 BY MR. BOSSE:

23 Q. And we'll briefly cover the Series 22. This is an exam
24 that Mr. Smith took in October of 1984, correct?

25 A. Correct. This is the direct participation program exam.

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1 This is a limited license covering issues involving real
2 estate products, gas and oil products, focuses on limited
3 liability partnerships. But again, this exam covers those
4 same, you know, prohibited practices, again how one must
5 conduct themselves when dealing with clients, from that
6 perspective of providing truthful communication.

7 So every exam has those same kind of pillars that
8 are discussed regarding what you can do and what you should
9 not do in the industry.

10 Q. And I should have asked, did Mr. Smith pass the Series 63
11 on his first attempt as well?

12 A. Yes, as well as the Series 22.

13 MR. BOSSE: Let's look at 97B, please, for the
14 witness.

15 BY MR. BOSSE:

16 Q. Is this the study outline that was in place for the
17 Series 22 that Mr. Smith took?

18 A. Yes.

19 MR. BOSSE: I'll offer 97B.

20 MR. GRINDROD: No objection.

21 THE COURT: 97B will be admitted.

22 (Government's Exhibit 97B was admitted.)

23 MR. BOSSE: If we could see Page 7.

24 THE COURT: Before you start into 97B, we're going
25 to take a 15-minute break now, and then we will come back and

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1 start with 97B.

2 MR. BOSSE: Yes, sir.

3 (The jury exited the courtroom.)

4 THE COURT: You may step down during the break,
5 Mr. Melley.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Just do not discuss your testimony.

8 One note, Mr. Bosse. It's your case, but the Court
9 is concerned about the minutia you're getting into in order
10 to make your case here on these FINRA regulations.

11 MR. BOSSE: Yes, sir, Your Honor.

12 THE COURT: We don't need a Ph.D. in FINRA
13 regulations, so cut to the heart of it. I don't know what
14 you plan for your next witness, but we're not going to spend
15 all this time on the details of these FINRA regulations.

16 MR. BOSSE: Yes, sir. I have, I think, two pages to
17 look at on this, and then we're going to talk about the other
18 individuals in the case.

19 THE COURT: As long as we're not going to go back
20 over these FINRA regulations again.

21 MR. BOSSE: No, sir. This is the only time.

22 (Recess from 10:57 a.m. to 11:17 a.m.)

23 (The jury entered the courtroom.)

24 THE COURT: The record will reflect that all jurors
25 are present.

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1 Does counsel concur?

2 MR. BOSSE: Yes, sir, Your Honor.

3 MR. YAROW: Yes, sir.

4 MS. McCASLIN: Yes, sir.

5 THE COURT: You may continue.

6 BY MR. BOSSE:

7 Q. Mr. Melley, when we left off, you were talking about the
8 Series 22 exam that Mr. Smith took and passed, and we're just
9 going to look at two pages from the study materials for that
10 exam as far as what was tested on it.

11 MR. BOSSE: Could we see, please, 97B, Page 7.

12 BY MR. BOSSE:

13 Q. And again, what concept is required to be learned by
14 someone who is going to sit for this examination?

15 A. Like most of the other exams we talked about, the
16 Series 7 and Series 63, there's a suitability standard for
17 the relationship with an investor client.

18 MR. BOSSE: If we could see Page 15 of 97B.

19 BY MR. BOSSE:

20 Q. And without getting into the detail, is there also -- one
21 of the subject matters that's tested here is the prohibition
22 on the use of manipulative, fraudulent devices?

23 A. Yes. This is, again, based on the federal securities
24 laws as well as a myriad of FINRA's own rules regarding how
25 one must conduct themselves in the securities industry and

—P. Melley - Direct—

1 not engage in any fraudulent or other prohibited practices
2 that are outlined.

3 Q. Is that what we're seeing is Section 2, fairly dealing
4 with customers?

5 A. Yes. That goes to the truthfulness and communication and
6 the standards of conduct one must have when, again, making
7 the client the primary responsibility.

8 Q. All right. Fair to say that someone taking the three
9 exams that Mr. Smith took and passed on the first try, in
10 each of them it's tested on prohibition about lying to
11 clients?

12 A. Yes. Again, those are the same themes that are occurring
13 over and over again in all these exams as well as the
14 continuing education requirements.

15 Q. How long did he spend in the industry when he was working
16 for brokers, so as a registered representative?

17 A. Approximately 16 years, between '93 and 2009, I believe.

18 Q. During those years while he was registered, ending in
19 2009, did he ever get in trouble with FINRA?

20 A. I did not see any violation of FINRA rules in terms of
21 investigative or disciplinary matters on his CRD report, no.

22 Q. Let's move on from Mr. Smith and talk about Mr. Alcorn.

23 MR. BOSSE: If I could have the witness shown
24 Exhibit 4A.

25 BY MR. BOSSE:

—P. Melley - Direct—

1 Q. And looking at 4A, I'm going to bring you to Page 3.

2 What is this?

3 A. Similar to Mr. Smith, this is a CRD report, in this case,
4 for Mr. Alcorn, again, on this page showing his name and
5 unique CRD number.

6 MR. BOSSE: I'll offer Government's Exhibit 4A.

7 THE COURT: Any objection?

8 MR. YAROW: No objection.

9 THE COURT: Hearing no objection, it's admitted.

10 (Government's Exhibit 4A was admitted.)

11 BY MR. BOSSE:

12 Q. Let's go down to Page 4 of 4A, now that the jury can see
13 it. And again, this is for Mr. Alcorn, correct?

14 A. Correct.

15 Q. What does it show as far as Mr. Alcorn's examination
16 history?

17 A. That between 1981 and 1982, Mr. Alcorn sat and passed
18 three exams: The Series 22, which we discussed, which is the
19 DPP exam; the Series 39, which is a supervisory role or
20 management position for those engaged in the direct
21 participation programs that came in on the 22, so those two
22 related; and then the Series 63, which we discussed, which is
23 like the state stockbroker exam.

24 Q. Without going back into the other documents, would he
25 have been examined on and had to learn about the same

—P. Melley - Direct—

1 information; duty to clients, suitability of investments, and
2 prohibitions against fraud and deceit?

3 A. Correct.

4 MR. BOSSE: We can take down this exhibit.

5 BY MR. BOSSE:

6 Q. And I want to now talk about two other men who have been
7 mentioned in this case, Daryl Bank and Kent Maerki.

8 Did you review the CRD reports for both of those men
9 as well?

10 A. I did.

11 Q. Let's start with Mr. Bank.

12 MR. BOSSE: And if we could show the witness
13 Government's Exhibit 2, please.

14 So let me just see. Only the witness can see this,
15 so if I can just scroll down, I'll see if this is the Bank
16 CRD. We'll have to correct the marking. Actually, the
17 exhibit is properly marked for the Court. The computer
18 screen has this as 1M, but this is the Government's 2,
19 Mr. Bank's CRD.

20 BY MR. BOSSE:

21 Q. Do you recognize this as a document that you are familiar
22 with?

23 A. Yes. This is one that I had originally generated for
24 Mr. Bank, again with his unique number and shows his time in
25 the securities industry.

~~P. Melley - Direct~~

1 MR. BOSSE: I'll offer Government's 2, and we'll
2 confirm we have that right.

3 MR. GRINDROD: No objection.

4 THE COURT: It will be admitted.

5 (Government's Exhibit 2 was admitted.)

6 BY MR. BOSSE:

7 Q. So looking at Mr. Bank's CRD report, what does it show as
8 far as his background, his employment background in the
9 securities industry?

10 A. Mr. Bank worked for five different brokerage firms over
11 14 years. He also was licensed -- had five different
12 licenses altogether, and he completed continuing education
13 requirements on four separate occasions.

14 Q. And you see that at the top of Page 6 here, from June of
15 2009, Mr. Bank was associated with a company called Dominion
16 Investment Advisors?

17 A. Correct. Yeah. And again, that page is information that
18 is entered in by the individual himself.

19 Q. All right. Let's go down to the test history for
20 Mr. Bank, which is here on Pages 8 and 9, and if you could
21 tell the jury -- just describe the tests that he took and
22 passed.

23 A. He passed the Series 3 exam, which is not a FINRA exam,
24 but it involves futures products, so it's by the National
25 Futures Association. He passed the Series 7, which we've

—P. Melley - Direct—

1 discussed. The series 24 is a management or supervisory
2 license connected to the Series 7, so it's somebody who is a
3 manager or a principal, general securities principal.

4 And he also passed the Series 63, again, the state
5 stockbroker exam, and then, finally, he also passed, in '96,
6 the Series 65, which is the state investment advisor exam
7 allowing one to engage in -- or relationships with clients as
8 an investment advisor as opposed to a stockbroker.

9 Q. And that's the one that Mr. Smith took but did not pass,
10 correct?

11 A. Correct.

12 Q. Mr. Bank passed these examinations also on his first try?

13 A. Yes.

14 Q. And I should have asked that for Mr. Alcorn. He also
15 passed all of the exams he passed on his first try, correct?

16 A. Correct. Yes.

17 Q. Did there come a time that a FINRA disciplinary
18 proceeding was started against Mr. Bank from his conduct in
19 his work as a broker?

20 A. Yes. FINRA's Department of Enforcement filed a
21 complaint, I believe, in August of 2008 against Mr. Bank and
22 at least one other individual.

23 MR. BOSSE: Could we see Page 14 of Government's 2,
24 please.

25 BY MR. BOSSE:

—P. Melley - Direct—

1 Q. And is this the filing that you're referring to here?

2 A. Correct.

3 Q. What were the allegations, speaking generally, against
4 Mr. Bank?

5 A. It involved misappropriation of funds, client funds, by
6 charging commissions that weren't legitimate as well as
7 providing false information to the firm he was working with,
8 and also providing false information to FINRA pursuant to
9 testimony and production of records.

10 Q. What is the process for a FINRA disciplinary proceeding?
11 How does it work?

12 A. Once a complaint is filed by FINRA, the normal course is
13 that if there's no resolution subsequent to that complaint,
14 it will go to a hearing, which is like a court proceeding,
15 before a hearing panel. That panel will then hear from both
16 sides. They will render a decision and, if found to be in
17 violation, will impose any sanctions, which could range from
18 a fine, a suspension, to a bar from the industry.

19 Another alternative is after filing that complaint,
20 there may be negotiations between FINRA and the defendant,
21 and that could result in an offer of settlement and then
22 possibly an acceptance of offer of settlement, which means
23 that it does not have to go to a hearing. That settlement,
24 though, must still be approved regarding any possible
25 sanctions.

—P. Melley - Direct—

1 Q. How was Mr. Bank's investigation as to his alleged
2 misconduct -- how was that resolved?

3 A. I believe there was an offer of settlement to Mr. Bank in
4 January 2010, and then in February 2010, the FINRA Office of
5 Hearing Officers approved a permanent-bar sanction based on
6 the conduct that it saw and that the parties had agreed to.

7 MR. BOSSE: Could we see, for the witness,
8 Government's 1, please.

9 BY MR. BOSSE:

10 Q. What are we seeing here, sir?

11 A. This is the actual decision by FINRA's Office of Hearing
12 Officers in February 2010. Again, the parties involved are
13 FINRA's Department of Enforcement as well as Mr. Bank and
14 another individual Gregory Bodoh.

15 Q. You see there's a second proceeding with Daryl G. Bank
16 and RH. Do you know who RH?

17 A. I believe RH refers to Roger Hudspeth.

18 Q. And this is pre-dating -- well, let me ask this:

19 This was from conduct that occurred in the 2008-2009
20 time period, correct?

21 A. Correct.

22 Q. Let's go down to Page 3, and we're not going to have you
23 read this document, but just generally, does this describe
24 the allegations that Mr. Bank misappropriated funds from the
25 Bank of the Commonwealth?

~~P. Melley - Direct~~

1 A. Yes, it does.

2 MR. BOSSE: If we could go to Page 7.

3 BY MR. BOSSE:

4 Q. Is this what you referred to earlier that a second part
5 of the proceeding was the fact that Mr. Bank had provided
6 false information to FINRA?

7 A. Exactly.

8 Q. All right.

9 MR. BOSSE: And if we could go down to Page 13,
10 please.

11 BY MR. BOSSE:

12 Q. What's happening on Page 13?

13 A. This just discusses the actual sanction that is put in
14 place by the hearing officers.

15 MR. GRINDROD: Objection, Your Honor. Are we going
16 to offer this in evidence?

17 THE COURT: Stand up.

18 MR. GRINDROD: Sorry, Your Honor.

19 THE COURT: What is your objection?

20 MR. BOSSE: I'll cure it. He's right.

21 MR. GRINDROD: I object to the exhibit being
22 discussed without being offered into evidence.

23 MR. BOSSE: I forgot to offer it. He's exactly
24 right. I'll offer Government's 1.

25 THE COURT: Any objection?

~~P. Melley - Direct~~

1 MR. GRINDROD: No, Judge.

2 THE COURT: Hearing none, it will be admitted.

3 (Government's Exhibit 1 was admitted.)

4 BY MR. BOSSE:

5 Q. Now we're at the end of Government's 1, but this is the
6 important part.

7 Can you tell the jury, because now they can see it,
8 what happened to Mr. Bank as a result of the investigation
9 and then the settlement that happened?

10 A. Mr. Bank was -- the sanction was that Mr. Bank would be
11 barred, permanently barred from the securities industry,
12 which, again, prevents him from, as a broker, engaging in the
13 purchase and sell of securities on behalf of clients.

14 Q. All right. And at that point, after this ban from the
15 securities industry is entered, is he allowed to have
16 anything to do with the buying and selling of securities for
17 clients?

18 A. He is not, in terms of buying or selling on behalf of
19 clients.

20 Q. All right. When did the ban take effect for Mr. Bank?

21 A. February 2010.

22 MR. BOSSE: We can take that down.

23 BY MR. BOSSE:

24 Q. I'd like to move on to Kent Maerki. Did you also review
25 the CRD report for Mr. Maerki?

—P. Melley - Direct—

1 A. I did.

2 MR. BOSSE: Could we see Government's 4, please.

3 BY MR. BOSSE:

4 Q. I'm going to bring you to Page 3, and if you can identify
5 this for the record.

6 A. This is Mr. Maerki's CRD report. And again, just showing
7 similar information in terms of his licenses and times in the
8 securities industry.

9 MR. BOSSE: I'll offer Government's 4.

10 MR. GRINDROD: No objection.

11 MR. YAROW: No objection.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 4 was admitted.)

14 BY MR. BOSSE:

15 Q. Looking down at Page 4, what examinations did Mr. Maerki
16 take, and when did he take them?

17 A. Mr. Maerki, at one point, held three separate securities
18 licenses: The S-1, or Series 1, which is the -- because he
19 took it in 1968, that was considered the predecessor of the
20 Series 7 that we've discussed here today, the, you know,
21 entrance exam into the industry as a registered rep;

22 He also passed, in '73, the S-00 or the Series 00,
23 which is equivalent to today's Series 24, or the general
24 securities principal, so it's a management or supervisory
25 role for someone who already holds the 7;

—P. Melley - Direct—

1 And then, finally, he had the Series 3, which is not
2 a FINRA exam. That, again, is the National Futures
3 Association exam with regards to futures derivative products.

4 Q. And so the series -- so he passed both the basic, the
5 Series 7 and the management-level securities exam?

6 A. Right. That were in place at the time. It just wasn't
7 called the Series 7.

8 Q. Let's go, if we can, down to Page 7 of this document, and
9 please tell the jury what we're seeing here on Page 7. What
10 happened to Mr. Maerki?

11 A. This was an action that was filed by NASD, FINRA's
12 predecessor at the time, against Mr. Maerki resulting in
13 originally, in 1976, a suspension that was later determined
14 to be inadequate, and the DBCC, which was kind of a
15 predecessor of FINRA's hearing officers panel, they decided
16 to upgrade his sanction to a bar based on his actions in this
17 case.

18 Q. So when was Mr. Maerki barred from the securities
19 industry?

20 A. 1977.

21 Q. So from 1977 on, Mr. Kent Maerki was not supposed to be
22 involved in the securities industry?

23 A. Correct.

24 Q. Did you -- in preparing for this case, did you review
25 other court documents about Mr. Maerki showing that he had

—P. Melley - Direct—

1 gotten in trouble with other regulatory authorities?

2 A. Yes.

3 MR. BOSSE: Could we see, for the witness,
4 Government's 5.

5 BY MR. BOSSE:

6 Q. If you can identify what we're seeing here in
7 Government's 5.

8 A. This was an SEC complaint and action back in 1984, again,
9 between the SEC and Mr. Maerki as well as other parties.

10 MR. BOSSE: I'll offer Government's 5.

11 MR. GRINDROD: No objection.

12 MR. YAROW: No objection.

13 THE COURT: It will be admitted, Government's 5.

14 (Government's Exhibit 5 was admitted.)

15 BY MR. BOSSE:

16 Q. And you've got the filing date is September 21 of 1984?

17 A. Correct.

18 Q. What court is this filed in?

19 A. Northern District of California.

20 Q. That's a federal court?

21 A. Yes.

22 Q. And along with some other entities and individuals, is
23 this the reference here that Kent Maerki was also named as a
24 defendant?

25 A. Correct.

—P. Melley - Direct—

1 Q. All right. What is the name of the court order that's
2 being entered here?

3 A. Permanent injunction, which is basically the sanction
4 against Mr. Maerki.

5 Q. All right. And what is Mr. Maerki barred from doing as a
6 result of this 1980s-era injunction?

7 A. You mean in terms of what did he do, or what was he not
8 allowed to do after that?

9 Q. Well, what was the SEC enjoining him from doing here?
10 And I'm thinking about part A down here.

11 A. Basically, yeah, he's not allowed to engage in securities
12 transactions based on information that he provided -- false
13 information regarding this particular investment opportunity.

14 Q. Okay. And are these court filings, to your knowledge,
15 public documents?

16 A. Yes.

17 MR. BOSSE: Could we see, please, Government's 6,
18 for the witness.

19 BY MR. BOSSE:

20 Q. What is Government's 6?

21 A. This is another filing in the Northern District of
22 California federal court, this time by the FTC, or Federal
23 Trade Commission, against the Cellular Corporation and other
24 defendants.

25 Q. Do those other defendants include Kent Maerki?

~~P. Melley - Direct~~

1 A. Correct.

2 MR. BOSSE: I'll offer Government's 6.

3 MR. GRINDROD: No objection.

4 THE COURT: It will be admitted.

5 (Government's Exhibit 6 was admitted.)

6 BY MR. BOSSE:

7 Q. And what is the filing year of this particular
8 stipulation?

9 A. 1986.

10 Q. Again, is this federal court in California?

11 A. Yes.

12 Q. And the name of the regulatory agency here?

13 A. Correct. Federal Trade Commission.

14 Q. And again, is this a publicly available document?

15 A. It is.

16 Q. And just to confirm, in addition to Kent Maerki, what is
17 this company that's listed in front of his name?

18 A. Spectra Financial Corporation.

19 Q. And are the other defendants the Cellular Corporation and
20 Cellular Capital Corporation?

21 A. Yes.

22 Q. I'm going to go down to -- forgive me. I'm going to
23 scroll down a few pages.

24 And can you tell the jury, what is Mr. Maerki barred
25 from doing by the FTC as a result of the stipulation that he

—P. Melley - Direct—

1 entered into?

2 A. Due to false statements that were made regarding certain
3 information regarding the investment, he was prevented from
4 engaging in this type of conduct going forward in terms of
5 soliciting new investment opportunities.

6 Q. And was he particularly barred from telling people, as it
7 shows here, that they were "certain or substantially certain
8 to obtain parts of a cellular telephone license"?

9 A. Correct.

10 Q. And is he also barred, as a result of this stipulation,
11 from misrepresenting the value or profit potential of a
12 license awarded through the FCC lottery?

13 A. Yes.

14 MR. BOSSE: Could we see Page 9 of the document,
15 please.

16 BY MR. BOSSE:

17 Q. And is he also barred from misrepresenting the degree of
18 risk involved in investments that he's touting?

19 A. Correct.

20 MR. BOSSE: Let me briefly look up to see if there
21 is anything else that I need to ask. One moment, please.

22 (Pause in the proceedings.)

23 MR. BOSSE: Going back to Exhibit 1, could we show
24 that again to the witness.

25 BY MR. BOSSE:

—P. Melley - Direct—

1 Q. Is this a document that is publicly available as well?

2 A. It is. The information is available in terms of, you
3 know, going online to probably, you know, find information
4 regarding that information.

5 Q. And can you tell the jury about FINRA's service called
6 BrokerCheck, generally?

7 A. BrokerCheck is the public arm of CRD. So the reports
8 we've looked at today are things as a FINRA staff member that
9 I'm able to gather and generate. BrokerCheck is the public
10 version of that where anyone can go online to BrokerCheck.com
11 through the FINRA website and get similar information for
12 individuals and firms, whether it's their licenses, their
13 background with various employers.

14 The difference is, for BrokerCheck, you can only go
15 back ten years in time as opposed to what has been provided
16 today in the CRD reports which covers everything that
17 somebody has done, even if it goes back 20 or 30 years.

18 Q. So from the 2010 to, say, 2018 time period, if one of the
19 other businessmen working with Mr. Bank wanted to look him
20 up, would they be able to look him up on BrokerCheck?

21 A. Yes. During that time frame, they could go back, and
22 they would get things ten years from the date they do their
23 search.

24 Q. Would that show that Mr. Bank had been barred from the
25 securities industry?

—P. Melley - Cross (By Mr. Yarow)—

1 A. Absolutely.

2 MR. BOSSE: No further questions.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. YAROW:

6 Q. Mr. "Melley"? Did I get that right?

7 A. "Melley."

8 Q. "Melley," I'm sorry.

9 My name is Rick Yarow. I represent David Alcorn.

10 MR. YAROW: Would the government mind pulling up
11 Exhibit 4A. I may have the wrong one. It's Mr. Alcorn's
12 record.

13 THE WITNESS: I believe this is it that we just
14 scrolled through. I think you just have to scroll to the
15 third page.

16 MR. YAROW: Go to Page 4, please.

17 BY MR. YAROW:

18 Q. So you testified previously that Mr. Alcorn took these
19 series of tests and passed them in '81-'82 time frame?

20 A. Correct.

21 Q. Does it show a work history that Mr. Alcorn would have
22 put down?

23 A. It doesn't show whether he was employed by any registered
24 brokerage firms at the time, just that he had taken these
25 exams at that time, back in '81 and '82.

—P. Melley - Cross (By Mr. Grindrod)—

1 Q. Does it show whether or not Mr. Alcorn would have been
2 required to attend any continuing education after he took
3 these exams?

4 A. Yeah. At that time, the continuing education
5 requirements were not in place. That didn't happen until the
6 late 1990s.

7 Q. Okay. And do these status dates have an end date that
8 you're able to tell from this document?

9 A. You mean in terms of how long is the license good for?

10 Q. Correct.

11 A. Yeah. The way it works is, once you have a license in
12 the industry, it's good for approximately two years. After
13 that point, it expires unless you go to another employer or
14 renew. So shortly after the '82 time frame, these licenses
15 would have expired or lapsed.

16 Q. Okay. And that's what this record reflects?

17 A. Correct.

18 MR. YAROW: Thank you.

19 CROSS-EXAMINATION

20 BY MR. GRINDROD:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. So a couple times on direct examination you mentioned
24 folks working for a brokerage firm.

25 A. Registered rep.

—P. Melley - Cross (By Mr. Grindrod)—

1 Q. Right. So if you're a registered rep, that doesn't
2 necessarily mean you, like, are employed, have a desk at some
3 big brokerage firm, right?

4 A. Well, I don't know about the size of the firm, but if you
5 are licensed as a registered rep, it means you are working
6 for that particular brokerage firm and that you are allowed
7 to handle client accounts.

8 Q. Right. You could be, like, a 1099 contractor, right?

9 A. No. You are an official employee of that company as a
10 registered rep or stockbroker for that brokerage firm.

11 Q. Let me ask it this way: So --

12 A. You're not a contractual employer. You are a
13 full-fledged employee.

14 Q. At the time that you have that job, right?

15 A. Correct.

16 Q. Okay. And when we're talking about brokerage firms, I
17 guess what I'm asking is, that doesn't mean, like -- that
18 doesn't necessarily mean, like, the big brokerage firms on
19 Wall Street in New York, right? There can be brokerage firms
20 elsewhere that maybe we don't think of as big brokerage
21 firms, right?

22 MR. BOSSE: I object to the last part. The first
23 part is fine, but who is thinking about what is a big or
24 small firm? Speculation.

25 THE COURT: Just rephrase your question,

—P. Melley - Cross (By Mr. Grindrod)—

1 Mr. Grindrod.

2 BY MR. GRINDROD:

3 Q. So when we're talking about brokerage firms, we're not
4 necessarily talking about the big Wall Street in New York
5 brokerage firms, right?

6 A. Right. Not every firm is Morgan Stanley or Goldman
7 Sachs. But again, in order to be a FINRA-registered
8 brokerage firm, you need to be approved by FINRA, so you need
9 to have the financial wherewithal in order to conduct your
10 business, and you have to go through a series of hoops, so it
11 still is a legitimate operation.

12 Q. Right.

13 A. But it could be a small size.

14 Q. You put it better than I described it, so thank you.

15 A. Sure.

16 Q. And we talked about how FINRA has the power to impose
17 sanctions, like a ban or a bar from the securities industry,
18 right?

19 A. Correct.

20 Q. And also lesser sanctions, like a suspension?

21 A. Correct. FINRA is not a government entity, so the limit
22 of its authority is to kick people out of the industry.

23 Q. And Kent Maerki got in trouble like that, right?

24 A. He received a bar, correct, 1977.

25 Q. From FINRA?

—P. Melley - Cross (By Mr. Grindrod)—

1 A. Correct.

2 Q. Same with Bank, Daryl Bank, same thing; he got in
3 trouble. Different time, different background, but got in
4 trouble with FINRA, right?

5 A. Correct.

6 Q. And I think you discussed on direct, that wasn't related
7 to anything that happened from 2011 on, right?

8 A. Correct.

9 Q. And Mr. Smith never got in trouble with FINRA. He wasn't
10 banned or barred or suspended or anything?

11 A. He was not.

12 Q. When we're talking about -- you talked a lot about the
13 rules that apply when someone is dealing in securities or
14 selling a security, right?

15 A. Correct.

16 Q. So, obviously, if someone is selling something that is
17 not a security, then the security regulations don't apply,
18 right?

19 MR. BOSSE: Objection. Calls for a legal conclusion
20 and also speculation.

21 THE COURT: Well, objection overruled.

22 THE WITNESS: Regardless of the investment, whether
23 it's a security or not, if that individual previously had a
24 license or fulfilled continuing education requirements
25 regarding the dos and don'ts of the industry in how one is

—P. Melley - Cross (By Mr. Grindrod)—

1 supposed to act with regard to investments, they are still
2 supposed to conduct themselves in a certain way.

3 Irrespective of the fact that what they are engaged
4 with at the time, whether it's deemed a security or not, if
5 they have the background in how to conduct themselves when it
6 comes to security investments, they know they are supposed to
7 be truthful, they know what the standards are that they are
8 supposed to conduct themselves.

9 BY MR. GRINDROD:

10 Q. Sure. I mean, whether you have a background in
11 securities or not, nobody is allowed to commit fraud, right?

12 A. Right. And everybody knows that, but those who are
13 committed to fulfilling his licenses and continuing education
14 requirements, it should be engrained in how they conduct
15 themselves going forward, whether it involves a security or
16 not.

17 Q. Okay. To keep a securities license or keep your
18 authority to be a registered rep, you just have to take, I
19 think you said, a continuing education course every two
20 years, right?

21 A. Every two years while being employed by a
22 FINRA-registered firm.

23 Q. And so that continuing education is not an additional
24 test, right?

25 A. It's a series -- you would almost think of it as a test,

—P. Melley - Cross (By Mr. Grindrod)—

1 yes. It's a series of computer modules covering compliance,
2 regulatory, ethics, sales practice.

3 Again, the continuing education requirement, because
4 I don't think I mentioned it fully earlier -- this is just
5 one part of it, this series of computer modules. The firm is
6 also responsible for all the employees to provide various
7 things, like meetings with the compliance officer, other
8 literature, again, all with the purpose of providing what the
9 current trends, standards, and issues are.

10 Especially for individuals that may have taken an
11 exam years ago, it keeps them current so that they can
12 continue to have a proper relationship with their customers.
13 Q. Fair enough. But you said you can think of it as a test.
14 I guess, let me ask you this:

15 It's not something that you pass or fail, right?
16 A. It's not a pass/fail, but in order to complete it, you
17 need to do, like, one module, answer it correctly in order to
18 move on to the next one. But it's not scored for purposes of
19 I failed it and I have to go back. You can't advance and
20 complete it until you do each section and answer the
21 questions that are required.

22 Q. So if you just click through, you can go to the next
23 module?

24 MR. BOSSE: That misstates what the witness just
25 said.

—P. Melley - Cross (By Mr. Grindrod)—

1 THE COURT: Objection sustained.

2 MR. GRINDROD: I'll move on, Judge.

3 BY MR. GRINDROD:

4 Q. We talked about the Series 7. I think you described it
5 as being a rigorous examination?

6 A. Correct.

7 Q. At the time, it was 250 multiple-choice questions; is
8 that right?

9 A. Correct. I think you had up to six hours to take it,
10 like a full day of multiple-choice questions, correct.

11 Q. And what is the percentage you have to have to pass?

12 A. 70.

13 Q. 70?

14 A. Correct.

15 Q. So it's, like, a C minus?

16 MR. BOSSE: Objection to that.

17 MR. GRINDROD: I'm sorry, Your Honor. I'll withdraw
18 it. We all had different teachers.

19 BY MR. GRINDROD:

20 Q. You don't have to have any special training to sit for
21 the Series 7, right?

22 A. No. You just have to, in order to want to pass it, and
23 especially if you're working for a registered broker, they
24 are investing in you to pass it, so they are going to give
25 you all the materials necessary to prepare properly.

—P. Melley - Cross (By Mr. Grindrod)—

1 Q. Sure. But you don't have to --

2 A. Yeah, you don't have to have a business degree or a
3 financial background.

4 Q. You don't have to have an MBA.

5 A. No.

6 Q. You don't have to have a college degree.

7 A. No, you don't.

8 Q. You can just take it if you have a GED?

9 A. You can take it as long as you are sponsored by a
10 FINRA-registered firm who then will sign you up to take the
11 exam.

12 Q. But education-wise, you can take it if you have a GED,
13 right?

14 A. Yes. You can take it with any background. Again, it's
15 from the firm's perspective. If they've hired you to take
16 it, they sign you up, and you take it.

17 Q. That's what Mr. Smith has, a GED, right?

18 A. I'm not sure of his educational background. I don't
19 recall.

20 Q. So 30 years ago, Mr. Smith presumably studied for this
21 multiple-choice test, right?

22 A. 30 years ago, he took the test, spent 16 years in the
23 industry with seven different firms, completed continuing
24 education requirements on five different opportunities, so,
25 over the course of that time, had the foundation knowledge of

—P. Melley - Cross (By Mr. Grindrod)—

1 how to operate in the securities industry and how to deal
2 with clients in a truthful manner and was aware of the dos
3 and don'ts of how to conduct himself.

4 MR. GRINDROD: Fair enough.

5 No further questions, Your Honor.

6 THE COURT: Any redirect?

7 MR. BOSSE: No, sir. This witness may be excused.

8 THE COURT: Any objection to this witness being
9 excused permanently?

10 MR. GRINDROD: No, Your Honor.

11 THE COURT: Thank you for coming. You may be
12 excused.

13 (The witness was excused.)

14 * * * * *

15
16 CERTIFICATION

17
18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.
20

21
22 _____/s/_____

23 Carol L. Naughton

24 November 9, 2022
25

Carol L. Naughton, Official Court Reporter